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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MELVIN R. BLANTON and MARK D. FRALEY,
Petitioners,

v.

CITY OF NORTH LAS VEGAS, NEVADA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

BRIEF OF THE STATE OF NEVADA AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENT

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TOPICAL INDEX

	Page
TABLE OF AUTHORITIES	i, ii, iii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
Under Nevada Law, The Misdemeanor Offense Of Driving Under the Influence Is Not A Serious Offense That Would Entitle A Defendant To A Jury Trial.	4
A. The Nevada Supreme Court Properly Applied The "Bright Line" Test.	5
B. The Nevada Federal District Court Has Improperly Applied A "Collateral Consequences" Analysis.	13
C. The Supreme Court Should Re-Affirm The Bright Line Test As To When The Right To Jury Trial Attaches.	26
CONCLUSION	30
APPENDIX A	1a
APPENDIX B	8a
APPENDIX C	11a
APPENDIX D	14a
APPENDIX E	15a

TABLE OF AUTHORITIES

Cases	Page
Baldwin v. New York, 399 U.S. 66 (1970).	7, 8, 10, 13, 22, 23
Blanton v. North Las Vegas Municipal Court, 103 Nev. ___, 748 P.2d 494 (Adv.Op. 135, 1987).	22, 24, 26
Bronson v. Swinney, 648 F.Supp. 1094 (D.Nev. 1986).	14, 15, 22, 23, 24, 27
Codispoti v. Pennsylvania, 418 U.S. 506 (1974).	7, 9, 13
Duncan v. Louisiana, 391 U.S. 145 (1968).	6, 23
Frank v. United States, 395 U.S. 147 (1969).	29, 30
Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988).	12, 18, 19, 20
Ludwig v. Massachusetts, 427 U.S. 618 (1976).	29
Matos v. Rodriguez, 440 F.Supp. 673 (D.P.R. 1976).	13
Muniz v. Hoffman, 422 U.S. 454 (1975).	9, 10, 13

TABLE OF AUTHORITIES CONTINUED

Rife v. Godbehere, 814 F.2d 563 (9th Cir. 1987).	11
Solem v. Stumes, 465 U.S. 638 (1984).	30
United States v. Arbo, 691 F.2d 862 (9th Cir. 1982).	17
United States v. Craner, 652 F.2d 23 (9th Cir. 1981).	14, 15, 16, 17, 18, 22, 23, 27
United States v. Fletcher, 505 F.Supp. 1053 (W.D.Va. 1981).	13
United States v. Hamdan, 552 F.2d 276 (9th Cir. 1977).	10, 13, 28
United States v. Jenkins, 734 F.2d 1322 (9th Cir. 1983), cert. denied, 469 U.S. 1217 (1985).	29
United States v. Rodriguez-Rodriguez, 742 F.2d 1194 (9th Cir. 1984).	17, 29
Constitutional and Statutory Provisions	
U. S. Const. amends. VI, XIV	6
18 U.S.C. § 1 (Oct. 30, 1984)	11, 13
Nev.Rev.Stat. § 207.010 (1987)	27

TABLE OF AUTHORITIES CONTINUED

Nev.Rev.Stat. § 453.336 (1987) 28

Nev.Rev.Stat. § 483.460 (1987) 5

Nev.Rev.Stat. § 483.473 (1987) 28

Nev.Rev.Stat. § 483.475 (1987) 28

Nev.Rev.Stat. § 483.490 (1987) 25

Nev.Rev.Stat. § 484.3792 (1987) 25

Other References

Nevada Drivers Handbook (rev. 8/31/87) 5

I. INTEREST OF AMICUS CURIAE

Nevada law presently precludes jury trials for defendants charged with a first offense of driving under the influence of intoxicating liquor or a controlled substance (DUI). The legislative, judicial and executive branches of the State of Nevada have, respectively, enacted laws, decided controversies, and enforced statutes of this State based upon the evolution of United States Supreme Court law regarding the distinction between "petty" and "serious" offenses and the determination as to whether a defendant is entitled to a jury trial. The Nevada Supreme Court followed this Court's "bright line" test and determined that jury trials are not constitutionally required when the maximum possible jail time upon conviction is six months. A departure from the "bright line" test would have severe consequences for the State of Nevada's legal system

which would involve a restructuring of its entire judicial and legislative framework. Should this Court abandon its "bright line" test in favor of a "collateral consequences" analysis, Nevada courts may have to determine whether such analysis also applies to other crimes previously considered as "petty" offenses. The Nevada Legislature would also have to consider whether its attempts to provide judges with options for punishment, education and rehabilitation of those violating what were "petty" offenses will now be construed as creating "collateral consequences" which might require jury trials.

II. SUMMARY OF ARGUMENT

The existence of a federal constitutional right to a jury trial in a criminal proceeding turns upon the characterization of the offense charged as "serious" or "petty." In determining whether an offense is serious or petty, courts

generally look to the maximum authorized penalty. It is well established that offenses punishable by up to six months imprisonment are "petty" and are not subject to the sixth and fourteenth amendment jury trial requirement. For the purpose of a sixth amendment analysis, the maximum authorized penalty provides the only objective indication of the seriousness of the offense. This objective standard promotes uniformity, objectivity and efficient judicial administration.

A sixth amendment analysis predicated upon a review of the collateral consequences of a conviction is inappropriate. This analysis ignores the legislature's considered judgment as to the seriousness of the offense and the state's overriding interest in efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive non-jury trials.

First offense DUI is punishable in Nevada by up to six months imprisonment and a fine of up to $1000 or both. This statutory penalty, established by the Nevada Legislature, provides the clearest and most consistent judgment as to the seriousness of the offense. The offense of driving under the influence falls within the historic and statutory definitions of "petty" offense and, therefore, there is no federal constitutional right to a jury trial.

III. ARGUMENT

Under Nevada Law, The Misdemeanor Offense Of Driving Under the Influence Is Not A Serious Offense That Would Entitle A Defendant To A Jury Trial.

In Nevada, a first offense of driving under the influence is considered to be a misdemeanor. Punishment for a conviction includes payment of tuition for and attendance in an educational course on abuse of alcohol and controlled substances; a sen-

tence of imprisonment for not less than two days nor more than six months or performance of forty-eight hours of community service; and, a fine of not less than $200 nor more than $1000. Nev.Rev.Stat. § 484.3792 (1987) (reproduced in Appendix A). In addition, a conviction results in a ninety-day revocation of the privilege to drive. Id. § 483.460(1)(c) (reproduced in Appendix B).[1] The prior decisions of this Court dictate that a DUI defendant is not constitutionally entitled to a jury trial.

A. The Nevada Supreme Court Properly Applied The "Bright Line" Test.

The existence of a constitutional right to a jury trial in a criminal pro-

[1]These penalties also are set forth clearly on pages ten and eleven of the Nevada Driving Handbook, with which all prospective Nevada drivers must be familiar in order to pass a required written examination. Nevada Driving Handbook at 10-11 (rev. 8/31/87) (reproduced in Appendix C).

ceeding turns upon the characterization of the offense charged as "serious" or "petty." In Duncan v. Louisiana, 391 U.S. 145 (1968), this Court held that "the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which - were they to be tried in a federal court - would come within the Sixth Amendment guarantee." Id. at 149 (footnote omitted). The Court also reaffirmed the long-established view that there is a category of petty offenses "which is not subject to the Sixth Amendment jury trial provision and should not be subject to the Fourteenth Amendment jury trial requirement here applied to the States." Id. at 159. The Court further found that "the penalty authorized for a particular crime is of major relevance in determining whether it is serious or not and may in itself, if severe enough, subject the trial to the mandates of the Sixth Amendment." Id.

In subsequent decisions, the Supreme Court concluded that offenses carrying a punishment in excess of six months imprisonment are "serious" and must be tried before a jury. Codispoti v. Pennsylvania, 418 U.S. 506, 512 (1974); Baldwin v. New York, 399 U.S. 66, 68 (1970). In Baldwin, the Court primarily focused on the issue of imprisonment and the necessity of objective criteria on which to make a determination. The Court noted that the overwhelming practice in the nation was to provide a jury trial in any case where the defendant faced a possible sentence in excess of six months. The Court stated:

> This near-uniform judgment of the Nation [that a jury trial is provided when an offense is punishable by imprisonment for more than six months] furnishes us with the only objective criterion by which a line could ever be drawn -- on the basis of the possible penalty alone -- between offenses that are and that are not regarded as "serious" for purposes of trial by jury.

Baldwin v. New York, 399 U.S. at 72-73 (emphasis added). The Court also indicated that the six month dividing line was in accordance with the federal statutory definition of "petty offense" contained in section 1 of Title 18 to the United States Code. Id. at 73 n.21.

In establishing the dividing line between "petty" and "serious" offenses at six months, and hence the right to a jury trial, the Court noted that even "the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions affecting his career and his reputation." Id. at 73. The Court recognized, however, that the disadvantages resulting from the imposition of a six month dividing line "may be outweighed by the benefits that result from speedy and inexpensive non-jury adjudications." Id.

In Codispoti, the Court stated that "our decisions have established a fixed dividing line between petty and serious offenses: those carrying a sentence of more than six months are serious crimes and those carrying a sentence of six months or less are petty crimes." Codispoti v. Pennsylvania, 418 U.S. at 512 (emphasis added).

In Muniz v. Hoffman, 422 U.S. 454 (1975), the Supreme Court first considered the relationship of the amount of a fine to the determination of whether an offense was "serious" or "petty." At the outset, the Court noted that, in determining whether an offense was "serious" or "petty," the Court has traditionally referred to the definition of a petty offense contained in federal statutes, 18 U.S.C. § (1)(3), which, at the time Muniz was decided, defined petty offenses as those crimes "the penalty for which does not

exceed imprisonment for a period of six months or a fine of not more than $500 or both." Id. at 476. See also Baldwin v. New York, 399 U.S. at 72-73 n.21. The Court rejected, however, the proposition that a crime must be considered serious if it is punishable by a fine in excess of $500. Id. The Court noted that "imprisonment and fines are intrinsically different" and held that a $10,000 fine of a 13,000 member union did not render an otherwise petty offense serious. Muniz v. Hoffman, 422 U.S. at 477.

The Ninth Circuit Court of Appeals relied more strictly upon the provisions of 18 U.S.C. Section 1(3) and held that a fine in excess of $500 renders an otherwise petty offense serious, thereby entitling the defendant to a jury trial. United States v. Hamdan, 552 F.2d 276, 279-80 (9th Cir. 1977). Recognizing the historic devaluation of money, however,

the court stated:

> The value of money changes, of course, as does the wealth of the economy. But Congress can be expected to adjust the monetary standard of [18 U.S.C.] section 1(3) so that it will continue to represent a fair judgment as to the appropriate line between petty and serious offenses.

Id. at 280 n.3. As predicted, Congress subsequently amended the definition of a petty offense to include any misdemeanor the punishment for which does not exceed six months imprisonment or a fine of not more than $5000.00 or both. See 18 U.S.C. § 1(3) (as amended October 30, 1984, Pub. L. 98-596, § 8, 98 Stat. 3138) (reproduced as Appendix D). The Ninth Circuit Court of Appeals has nevertheless retained $500 as the fixed dividing line between petty and serious offenses. See Rife v. Godbehere, 814 F.2d 563, 565 (9th Cir. 1987) (misdemeanor punishable by up to a $1000 fine is a serious offense and therefore

the defendant is entitled to a jury trial).

Recently, the fifth circuit in Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988), stated that a $500 or $1000 fine did not make a difference:

> As noted, the focus is on the confinement, not the fine; further, Muniz sustained a ten thousand dollars fine, and Congress then found five thousand dollars appropriate for petty offenses by individuals. Viewed historially, it is evident that, because of inflation, one thousand dollars today (or in 1984) is worth substantially less than five hundred dollars was both when Congress first used that figure in 18 U.S.C. § 1 (which was at least as early as 1948) and when Baldwin was decided in 1970.

Id. at 1216 n.30.

Under the Nevada Statute at issue here, a defendant charged with first offense DUI is exposed to a maximum punishment of not more than six months in jail and a fine of not more than $1000. In determining whether the defendant has a

constitutional right to a jury trial, this Court should re-affirm the "bright line" test approved by the decisions in Baldwin, Codispoti, Muniz and Hamdan and uphold the decision of the Nevada Supreme Court which followed this rationale. Because the maximum potential punishment is less than six months and a fine considerably less than the $5000 limit contained in 18 U.S.C. § 1(3), the offense must be characterized as petty. Therefore, there is no federal constitutional right to a jury trial. United States v. Fletcher, 505 F.Supp. 1053, 1054 (W.D.Va. 1981); Matos v. Rodriguez, 440 F.Supp. 673, 676 (D.P.R. 1976).

B. The Nevada Federal District Court Has Improperly Applied A "Collateral Consequences" Analysis.

Federal courts have split on the issue of whether DUI is a "serious" offense such that the Constitution requires

that a jury trial be provided. A few courts have concluded that DUI on a public road is malum in se and, additionally, that the so-called "collateral consequences" attendant upon a conviction (mandatory incarceration, revocation of drivers license, system of increasing penalties for subsequent offenses, increasing insurance premiums and public notoriety) justify classifying DUI as serious. See United States v. Craner, 652 F.2d 23 (9th Cir. 1981); Bronson v. Swinney, 648 F. Supp. 1094 (D. Nev. 1986).

In Bronson v. Swinney, the district court held that a defendant charged with a first offense DUI pursuant to section 484.3792 of the Nevada Revised Statutes had a federal constitutional right to a jury trial. Bronson v. Swinney, 648 F.2d at 1100. In reaching its decision, the court relied heavily upon the ninth circuit's decision in Craner. Id. at 1097-

98. The district court in Bronson noted that the maximum authorized penalty was the most important factor in determining whether an offense is serious or petty for sixth amendment analysis, but held that other factors such as the collateral consequences of a conviction, nature of the offense and treatment of the offense at common law could also be considered. Id. at 1098-99. The court concluded that the consequences of a conviction for DUI, which included an automatic driver's license revocation, a mandatory jail sentence, a system of increasing penalties for subsequent convictions, and "the opprobrious nature of the offense," indicate it is considered a "serious" offense by the people of the State of Nevada and, therefore, the sixth and fourteenth amendments require a jury trial. Id. at 1100.

The district court's reliance on Craner was misplaced. In Craner, the

ninth circuit held that DUI within Yosemite National Park, which was punishable by six months imprisonment or a $500 fine or both, was a "serious" offense for which the Federal Constitution required a jury trial. This penalty was set by the Secretary of the Interior and not by Congress. As such, the court concluded that there was no assurance that the penalty represented "a considered legislative judgment of the gravity of the offense." United States v. Craner, 652 F.2d at 25. The court held that the possibility of having a drivers license revoked by the State of California as a result of the federal court conviction constituted an "additional consequence" which justified classifying the crime as serious and entitling the defendant to a jury trial. Id. at 25-26, 28.

The Craner decision, however, did not create a per se rule that the collateral

consequences of a misdemeanor conviction transform a "petty" offense into a "serious" offense thereby requiring a jury trial. United States v. Rodriguez-Rodriguez, 742 F.2d 1194, 1195 (9th Cir. 1984). There are two significant factors which distinguish the present cases from Craner. First, the offense of DUI has been classified by the Nevada Legislature as a misdemeanor. This constitutes "a considered legislative judgment of the gravity of the offense." United States v. Arbo, 691 F.2d 862, 864 (9th Cir. 1982). In Craner, "[g]iven the lack of legislative judgment, there was good reason 'to diminish the importance of the maximum penalty in determining whether' the offense was 'petty' and to 'focus on the additional consequences that attend[ed] conviction of [the] offense.'" Id., quoting United States v. Craner, 652 F.2d at 28 (Sneed, J., concurring).

In light of the Nevada legislative judgment of the gravity of the offense, the importance of the maximum penalty is not diminished and, therefore, a court should not consider the collateral consequences of the conviction. See United States v. Craner, 652 F.2d at 28 (Sneed, J., concurring) (if the maximum penalty reflected a considered legislative judgment, DUI offense would be considered petty regardless of the collateral consequences).

The most recent federal court to consider this issue was the fifth circuit in Landry. Landry was convicted of violating Louisiana Revised Statutes Section 14:98 which authorizes a maximum sentence of six months' imprisonment and a $500.00 fine. The statute also provides for a minimum incarceration of ten days unless the offender participates in both driver improvement and substance abuse programs,

and performs community service work. The offender is ordinarily assessed administrative costs.

The Landry court stated its approval of the United States Supreme Court's "bright line" test and noted, "the Court has never held or stated any crime is a 'serious' rather than a 'petty' offense on the basis of any criteria other than whether its maximum authorized confinement exceeded six months or whether it was indictable at common law." Landry v. Hoepfner, 840 F.2d at 1209. The Landry court stated that, to add a third criterion -- the judicial perception of the seriousness of the offense "is to inject an inherently and inescapably subjective and imprecise factor into the calculus. Essentially, this would involve judges in applying the same sort of criteria that the legislative branch did in the first place when it fixed the maximum sentence."

Id. The court emphasized the right of each state legislature to determine what conduct shall be punishable within its borders: "What is 'serious' in Vermont may not be 'serious' in Louisiana, in terms either of a particular problem's concrete manifestations or of the popular perception or evaluation of it in each of those states." Id. at 1210. While recognizing the gravity of the problem of drunken drivers, the Landry court nonetheless stated,

> The nature of the governmental response to the problem . . . is a matter for legislative determination . . . . Moreover, the problem is not necessarily the same in each state. . . and even if it were, this would not require each state to address it in the same fashion. There is more than one way to skin a cat.

Id. at 1213 n.25.

The argument that recent years have been characterized by a strong public outcry against drunk drivers does not make

the offense malum in se as DUI may not, in and of itself, result in harm.[2] Driving under the influence of liquor is not an inherently evil and injurious act as the act itself does not necessarily injure another person and is not universally considered as immoral. Nonetheless, driving under the influence carries enough potential for harm that it is, in the State of Nevada as well as in other states, prohibited conduct. And the legislature of each state has, after evaluating various relevant factors, such as public opinion, the state's judicial framework, and the practicality and desir-

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[2] Malum In Se is defined as a "wrong in itself; an act . . . involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law. An act . . . inherently and essentially evil, that is, immoral in its nature and injurious in its consequences . . . . Such are most or all of the offenses cognizable at common law. . .as murder, larceny, etc." Black's Law Dictionary at 865 (5th ed. 1979).

ability of various methods of punishing the offense, enacted code sections appropriate to that state.

The Nevada Supreme Court, in deciding this case below, cited numerous other jurisdictions which had reached the conclusion that there is no right to jury trial for misdemeanor DUI defendants. Blanton v. North Las Vegas Muncipal Court, 103 Nev. ___,___, 748 P.2d 494, 503 (Adv. Op. at 14, 1987). The Nevada Supreme Court further stated that ". . .we have respectfully concluded that Bronson, and the decisions of the 9th Circuit panels upon which the federal district court relied, represent an unnecessary and unwarranted expansion of the Supreme Court's holding in Baldwin." Id. at ___, 748 P.2d at 500 (Adv.Op. at 10).

A second factor distinguishing the present cases from Craner is the existence of a significant fiscal impact on the

State of Nevada. The United States Supreme Court has recognized that the six-month dividing line between petty and serious offenses strikes a balance between the legitimate interests of the state and the rights of the defendant. See Duncan v. State of Louisiana, 391 U.S. at 160. See also Baldwin v. New York, 399 U.S. at 73.

In the present case, it is respectfully submitted that the balancing of interests tips significantly in the favor of the State of Nevada. Even the court in Bronson noted the significant financial impact its decision would have upon the state, counties and municipalities. Bronson v. Swinney, 648 F.Supp. at 1100. First offense DUI prosecutions in Nevada are not a "comparative rarity" as was the case in Craner. There is a further impact upon the interests of the State of Nevada by the fact that municipal courts, which

also handle misdemeanor DUI cases, are precluded by law from holding jury trials. Nev.Rev.Stat. § 266.550 (1987). Accordingly, as noted by the Nevada Supreme Court, the benefits of efficient law enforcement and financial savings from non-jury trials clearly outweigh the disadvantages to the individual defendant charged with a petty offense. Blanton v. North Las Vegas Municipal Court, 103 Nev. at ____, 748 P.2d at 501-02 (Adv.Op. at 11-14).

If this Court decides to abandon the bright line test in favor of a collateral consequences type of review, it is respectfully requested that the court consider several factors, not considered by the court in Bronson, which mitigate the impact of the asserted "collateral consequences." First of all, most first time offenders are receiving a sentence substantially less than the maximum potential

sentence. In the vast majority of these cases, the defendants are receiving a jail term of less than five days and a fine of approximately $500. Community service is also available in lieu of incarceration. Nev.Rev.Stat. § 484.3792(1)(A)(2) (1987). As a result of this alternative, many first-time offenders avoid serving any jail time. Lastly, the inconvenience of driver's license revocation can be minimized by the issuance of a restricted license. Id. § 483.490 (1987) (reproduced as Appendix E). A defendant may receive a restricted license to drive a motor vehicle to and from work or in the course of his work, and to acquire food and medical care for himself or an immediate family member after half the period of the revocation has expired. Id.

As a practical matter, the consequences which face a first-time DUI offender in Nevada represent what the people

of this state, through their legislature, believe to be an effective and innovative method of decreasing the probability that a second DUI offense will occur. A great deal of flexibility is given the judge in fashioning a sentence appropriate to the circumstances, so that education and rehabilitation rather than strictly punishment-by-incarceration may be accomplished. The collateral consequences attendant to a first-time DUI conviction in Nevada are for the most part treated as alternatives to incarceration, not additions to incarceration. The federal district court failed to consider these factors properly in Bronson. That decision should not be followed.

C. The Supreme Court Should Re-Affirm The Bright Line Test As To When The Right To Jury Trial Attaches.

Only the "bright line test" which looks to the maximum authorized penalty,

promotes the interests of uniformity, objectivity and practical judicial administration. A collateral consequences review, similar to that employed by the courts in Craner and Bronson, is not an equitable or practical method of determining whether there is a constitutional right to a jury trial. As such, amicus respectfully suggests that the bright line test be applied to resolve the issue in this case.

Given the complexity of our modern criminal statutes, almost every misdemeanor conviction carries collateral consequences, the most serious of which may subject the defendant to a more severe penalty if subsequent crimes are committed. See id. § 207.010 (repeat misdemeanor offenses punishable as felony). In addition, drivers convicted of multiple driving offenses within one year can be subjected to license revocation pursuant

to the state's demerit points system. Id. §§ 483.473; 483.475. The punishment for a person under twenty-one years of age convicted of possession of less than one ounce of marijuana includes the possible suspension of his or her driver's license for up to six months. Id. § 453.336(3)(a)(2).

Similarly, the violation of any criminal statute must be viewed by society as a serious matter. If the court adopts a collateral consequences analysis, it may be necessary to review each misdemeanor offense to determine if the consequences of a particular conviction render the offense "serious." Such a procedure would be subjective, burdensome and unworkable. United States v. Hamden, 552 F.2d at 279-80.

The subjectiveness and unpredictability of the collateral consequences analysis is further evidenced by a review of

what courts consider to be significant collateral consequences. Courts have held that an extended sentence of probation, which is potentially a very significant infringement of personal freedom, is insufficient to classify a petty offense as serious. See Frank v. United States, 395 U.S. 147 (1969); United States v. Jenkins, 734 F.2d 1322 (9th Cir. 1983), cert. denied, 469 U.S. 1217 (1985). Similarly, the notably serious collateral consequences of conviction for crossing the border illegally does not entitle an alien to a jury trial. United States v. Rodriguez-Rodriguez, 742 F.2d at 1195.

The Supreme Court has consistently held that the maximum authorized penalty provides the clearest, most objective indication of the seriousness of the offense. See Ludwig v. Massachusetts, 427 U.S. 618, 624-625 (1976) (no right to jury trial for petty offenses which is defined

by reference to the maximum authorized punishment); Frank v. United States, 395 U.S. at 148 (severity of the authorized penalty is the most relevant indication of the seriousness of an offense). The right to a jury should not be dependent upon the subjective values of an individual judge. The maximum authorized sentence is the only objective benchmark of the seriousness of a criminal offense. This standard promotes the interest of uniformity, objectivity and judicial administration.[3]

CONCLUSION

Based upon the analysis above, the State of Nevada as amicus curiae respectfully urges the Court to affirm the judgment below of the Nevada Supreme Court.

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[3] Should this Court decide to reverse the decision of the Nevada Supreme Court and hold that a collateral consequences analysis is appropriate, the Court at some time will have to decide whether its ruling is retroactive. See Solem v. Stumes, 465 U.S. 638, 643 (1984).

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APPENDICES

APPENDIX A

Nev.Rev.Stat. § 484.3792 (1987)

Section 484.3792: Driving under the influence of intoxicating liquor or controlled substance: Penalties; segregation of offender; probation, suspension of sentence and plea bargaining restricted; intermittent confinement; consecutive sentences.

1. Any person who violates the provisions of NRS 484.379:

(a) For the first offense within 7 years, is guilty of a misdemeanor. Unless he is allowed to undergo treatment as provided in NRS 484.3794, the court shall:

(1) Except as otherwise provided in subsection 6, order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the department and complete the course within the time specified in the order and the court shall notify the department if he fails to complete the course within the

specified time;

(2) Unless the sentence is reduced pursuant to NRS 484.3794, sentence him to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as having violated the provisions of NRS 484.379; and

(3) Fine him not less than $200 nor more than $1,000.

The teacher of the educational course shall evaluate the offender and, if he finds the offender is an abuser of alcohol or controlled substances, he shall promptly report his findings to the court for its use.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Except as provided in NRS 484.3794, the court shall sentence him to imprisonment for not less than 10 days nor more than 6 months in

jail and fine him not less than $500 nor more than $1,000.

(c) For a third or subsequent offense within 7 years, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than $2,000 nor more than $5,000. An offender so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp restitution center or similar facility.

2. Any offense which occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convic-

tions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must be shown at the preliminary examination or presented to the grand jury.

3. No person convicted of violating the provisions of NRS 484.379 may be released on probation, and no sentence imposed for violating those provisions may be suspended except, as provided in NRS 4.373 and 5.055, a portion of the sentence imposed that exceeds the mandatory minimum. No prosecuting attorney may dismiss a charge of violating the provisions of NRS 484.379 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported

by probable cause or cannot be proved at the time of trial.

4. Any term of confinement imposed under the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months after the date of conviction or within 6 months after the date of sentencing if the offender underwent treatment pursuant to NRS 484.3794. Any time for which the offender is confined must consist of not less than 24 consecutive hours.

5. Jail sentences simultaneously imposed under this section and NRS 483.560 or 485.330 must run consecutively.

6. If the person who violated the provisions of NRS 484.379 possesses a driver's license issued by a state other than Nevada and does not reside in Nevada, in carrying out the provisions of subparagraph (1) of paragraph (a) of subsection 1, the court shall:

(a) Order the person to pay tuition for and submit evidence of completion of an educational course on the abuse of alcohol and controlled substances approved by a governmental agency of the state of his residence within the time specified in the order; or

(b) Order him to complete an educational course by correspondence on the abuse of alcohol and controlled substances approved by the department within the time specified in the order, and the court shall

notify the department if the person fails to complete the assigned course within the specified time.

7. As used in this section, unless the context otherwise requires, "offense" means a violation of NRS 484.379 or 484.3795 or homicide resulting from the driving of a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct.

APPENDIX B

Nev.Rev.Stat. § 483.460

Section 483.460 Mandatory revocation of license, permit or privilege to drive; periods of revocation.

1. Unless otherwise provided by statute, the department shall revoke the license, permit or privilege of any driver upon receiving a record of his conviction of any of the following offenses, when that conviction has become final, and the driver is not eligible for a license, permit or privilege to drive for the period indicated:

(a) For a period of 3 years if the offense is:

(1) Violation of NRS 484.3795 or subsection 2 of NRS 484.377 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

(2) A third or subsequent violation within 7 years of NRS 484.379.

(b) For a period of 1 year if the offense is:

(1) Any other manslaughter resulting from the driving of a motor vehicle or felony in the commission of which a motor vehicle is used, including the unlawful taking of a motor vehicle.

(2) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or bodily injury of another.

(3) Perjury or the making of a false affidavit or statement under oath to the department under NRS 483.010 to 483.630, inclusive, or under any other law relating to the ownership or driving of motor vehicles.

(4) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(5) A second violation within 7 years of NRS 484.379 and the driver is not eligible for a restricted license during any of that period.

(c) For a period of 90 days, if the offense is a first violation within 7 years of NRS 484.379.

APPENDIX C

Nevada Driving Handbook (Rev. 8-87)

DRINKING AND DRIVING

The penalty for driving under the influence of alcohol and/or drugs is severe. There are two penalties which can occur with each offense. First, an administrative penalty (license revocation), secondly, a criminal penalty (court conviction).

Administrative Penalty

When a law enforcement officer requests a driver to submit to a chemical test of his blood alcohol content, the driver is required to take the test by law (see Implied Consent Law, page 11).

If the driver is found to have 0.10 or more percent blood alcohol content ,the driver's privilege to drive is immediately revoked. The law enforcement officer is

authorized to take the license at the time of arrest.

The period of revocation is 90 days.

Criminal Penalty

First offense within seven years:

Jail sentence: Two days to six months (or 48 hours community service);

Fine: $200 to $1,000;

DUI school: Tuition average is $150;

License revocation: 90 days.

Second offense within 7 years:

Jail sentence: Ten days to six months;

Fine: $500 to $1,000;

License revocation: One year.

Third or more offense within 7 years:

Prison sentence: One year to six years;

Fine: $2,000 to $5,000;

License revocation: Three years.

DUI causing death or serious injury:

Prison sentence: One year to twenty years;

Fine: $2,000 to $5,000;

License revocation: Three years.

If an individual receives a license revocation for the administrative penalty and also for the criminal penalty, the revocation periods run concurrently.

A restricted license can be issued after serving one-half of the revocation period, however, a restricted license cannot be given on a second offense.

APPENDIX D

Section 1, 18 U.S.C., provides:

Notwithstanding any Act of Congress to the contrary:

(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

(2) Any other offense is a misdemeanor.

(3) Any misdemeanor, the penalty for which, as set forth in the provision defining the offense, does not exceed imprisonment for a period of six months or a fine of not more than $5,000 for an individual and $10,000 for a person other than an individual, or both, is a petty offense.

APPENDIX E

Nev.Rev.Stat. § 483.490 (1987)

Section 483.490 Period of suspension or revocation: issuance of restricted license upon evidence of hardship; penalties.

1. Unless otherwise provided by specific statute, the department may not suspend a license for a period of more than 1 year.

2. After a driver's license has been suspended or revoked for an offense other than a second violation within 7 years of NRS 484.379 and half the period during which the driver is not eligible for a license has expired, the department may, unless the statute authorizing the suspension prohibits the issuance of a restricted license, issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle:

(a) To and from work or in the course of his work or both; or

(b) To acquire supplies of medicine or food or receive regularly scheduled

medical care for himself or a member of his immediate family. Before a restricted license may be issued, the applicant must submit sufficient documentary evidence to satisfy the department that a severe hardship exists because the applicant has no alternative means of transportation and that the severe hardship outweighs the risk to the public if he is issued a restricted license.

3. A driver who violates a condition of a restricted license issued under subsection 2 or by another jurisdiction is guilty of a misdemeanor, and if his license was suspended or revoked for a violation of NRS 484.379, 484.3795, 484.384 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct, he shall be punished in the

manner provided by subsection 2 of NRS 483.560.

4. The periods of suspensions and revocations under this chapter and under NRS 484.384 must run consecutively, except as provided in NRS 483.465 and 483.475, when the suspensions must run concurrently.

5. Whenever the department suspends or revokes a license, the period of suspension, or of ineligibility for a license after the revocation, begins upon the effective date of the revocation or suspension as contained in the notice thereof.